

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

LESLIE SHANNON PLATKIN

Plaintiff,

v.

FNF NV BRASADA, LLC, an Oregon
Limited Liability Company, NORTHVIEW
HOTEL GROUP LLC, a Delaware Limited
Liability Company, and DUNCAN
HOGARTH

Defendant.

CASE NO. _____

CIVIL COMPLAINT

(Strict Liability, Negligence, Breach of
Implied Warranty of Merchantability and
Fitness; Spoliation)

Amount Prayed for \$1,360,000

CLAIM IS NOT SUBJECT TO
MANDATORY ARBITRATION
DEMAND FOR JURY TRIAL

1 Plaintiff alleges:

Allegations Common to all Claims for Relief

3 1.

4 Plaintiff Leslie Shannon Platkin (“plaintiff”), brings this action against defendants FNF
5 NV BRASADA, LLC, NORTHVIEW HOTEL GROUP LLC, and DUNCAN HOGARTH
6 (“defendants”) for personal injuries caused by defendants’ negligence in Oregon.

2.

At all relevant times, defendant FNF NV Brasada, LLC was an Oregon Limited Liability Company, with a principal place of business in Las Vegas Nevada, and was duly authorized to transact business for profit in the State of Oregon, and was conducting business for profit within Oregon.

3.

At all relevant times, defendant Northview Hotel Group LLC was a Delaware Limited Liability Company, with a principal place of business in WestPort, CT and was duly authorized to transact business for profit in the State of Oregon, and was conducting business for profit within Oregon.

4.

At all times material, FNF NV Brasada, LLC and Northview Hotel Group LLC (collectively “Brasada Ranch”) conducted, and continue to conduct, a substantial portion of its business in Oregon, including the regular and sustained business operation of a hotel resort in the State of Oregon.

5.

At all relevant times, defendant Duncan Hogarth resides in Bend, Deschutes County, Oregon and was the resort manager for Brasada Ranch.

6.

At all times material herein, Brasada Ranch controlled its agents or employees in all aspects of its operation and service. At all times material herein, Brasada Ranch's agents or employees were acting within the course and scope of their agency or employment. As such, Brasada Ranch was vicariously liable, including under the doctrine of respondeat superior, for the acts and omissions of its agents or employees.

1 7.

2 On July 22, 2018, plaintiff was staying as a guest on the premises of defendants' property
3 at the Brasada Ranch resort.

4 8.

5 Defendants' employee and/or agent stocked plaintiff's suite with cookware, dishes,
6 glassware, eating utensils, and other supplies for the making of food and beverages, and more
7 specifically, iced tea, including the provision of a glass pitcher for steeping iced tea, which was
8 not in a safe and usable condition and was in an unreasonably dangerous condition for its
9 intended use.

10 9.

11 On July 22, 2018, plaintiff used the glass pitcher to steep tea. Suddenly and without
12 warning, the pitcher shattered and scalded plaintiff causing severe physical injury.

13 10.

14 Below is a photograph of the shattered glass pitcher.



11.

2 Below are photographs taken of the burn injuries caused by defendants, during the first
3 week following the scalding.



12.

6 Below are photographs taken of the burn injuries caused by defendants, during the third
7 to fourth week following the injury.





13.

On July 22, 2018, plaintiff informed defendant Duncan Hogarth of her injury. At which time, defendant Duncan Hogarth took the broken glass pitcher and stated to plaintiff that he would hold onto the evidence.

14.

At that time, defendant Duncan Hogarth gave plaintiff his business card, a photo of which is below.



DUNCAN HOGARTH
Managing Director

16986 SW Brasada Ranch Rd., | Powell Butte, OR 97753
D 541.504.3227 | **C** 970.889.3962 | **F** 541.504.6806
duncanh@brasada.com | www.brasada.com

111

15.

On July 31, 2018, plaintiff sent a spoliation letter to defendants by and through Duncan Hogarth, demanding that defendants preserve any and all evidence relating to the claim, including the broken glass pitcher, statements, and video evidence.

16.

Notwithstanding the notice of plaintiff's injury and the promise of defendant Duncan Hogarth to preserve the shattered glass pitcher, defendants subsequently destroyed and/or disposed of the glass pitcher.

17.

As a result of defendants' actions, plaintiff sustained the following injuries and damages:

- a) First degree burns, second degree burns, partial thickness burns;
- b) Infection;
- c) Blistering and permanent scaring;
- d) Susceptibility to re-injury and degenerative process to these same injured areas;
- e) Physical pain and suffering and emotional distress;
- f) As a further result of her injuries, plaintiff has and will continue to suffer physical, mental and emotional pain; and
- g) Her right to enjoy life has been diminished because of her inability to engage in her normal activities without pain.

18.

As a further result of her injuries, plaintiff has, and will continue to suffer, physical and emotional pain. Her right to enjoy life has been diminished because of her inability to engage in her normal activities without pain. Plaintiff is entitled to an award of non-economic damages in an amount the jurors find to be appropriate, but not to exceed \$500,000.00.

19.

As a further result of defendants' actions, plaintiff has incurred medical and related expenses in the approximate amount of \$10,000.00. Furthermore, plaintiff anticipates future medical and related expenses in the approximate amount of \$50,000.00. Finally, plaintiff has sustained present and future income loss in the amount of \$800,000.00. All to plaintiff's economic damages in an amount the jurors find to be appropriate.

FIRST CLAIM FOR RELIEF

(Count One: Strict Liability)—Against Brasada Ranch Only

20.

Plaintiff realleges paragraphs 1 through 19 as though set forth fully herein.

21.

Under ORS 30.920, a seller or lessor of any product in a defective condition, unreasonably dangerous to the consumer, is subject to liability for physical harm to the consumer if the seller is engaged in the business of selling such a product, and the product is expected to and does reach the consumer without substantial change in the condition in which it is sold.

22.

The pitcher provided to plaintiff for use in steeping iced tea and hot water described in paragraph 10, above, is a defective condition that rendered the pitcher unreasonably dangerous to the consumer. The pitcher was expected to and did reach the consumer without substantial change in the condition in which it was provided to plaintiff. Defendants also failed to provide proper and adequate warnings for safe use, as well as the dangers of use, relative to the unreasonably dangerous condition of the pitcher.

111

r

23.

As a seller and lessor of amenities including the glass pitcher described in paragraph 8 through 10 and 13 through 16, above, Defendants are strictly liable under ORS 30.920 for the injuries and damages that plaintiff has suffered and will continue to suffer as alleged in paragraphs 11 through 12 and 17 through 19, above, which are realleged and incorporated by reference herein.

(Count Two: Negligence)—Against Brasada Ranch Only

24.

Plaintiff realleges paragraphs 1 through 19 as though set forth fully herein.

25.

Defendants were negligent in one or more of the following particulars, each of which created a foreseeable and unreasonable risk of harm to plaintiff:

- a) In failing to exercise due care in the hiring and retention of its agents and employees;
- b) In failing to provide glass pitchers that were safe for ordinary use as intended;
- c) In renting units with included glass pitchers that were unreasonably dangerous for use in steeping tea.
- d) In failing to properly educate its agents and employees with respect to reasonably safe glass pitchers;
- e) In failing to adequately warn patrons of the dangerous condition of the glass pitcher and that it was unsafe for ordinary use in steeping tea;
- f) In allowing its agents and employees to provide unreasonably dangerous glass pitchers to patrons;
- g) In failing to exercise ordinary care in supervising its agents and employees conduct;

- h) In failing to prevent the foreseeable misconduct of its agents and employees from causing harm to others, including plaintiff as alleged herein;
- i) In causing foreseeable and unreasonable injury to plaintiff; and
- j) In acting in a manner that was dangerous under the circumstances.

26.

Defendants' negligence was a substantial factor in causing plaintiff's injuries. As a result of defendants' negligence, plaintiff has suffered the injuries and damages alleged in paragraphs 11 through 12 and 17 through 19, above, which are realleged and incorporated by reference herein.

(Count Three: Breach of Implied Warranty of Merchantability and Fitness)

—Against Brasada Ranch Only

27.

Plaintiff realleges paragraphs 1 through 19 as though set forth fully herein.

28.

At all times material herein, defendants were merchants within the meaning of ORS 72.1040(1) with respect to the pitcher described in paragraph 8 through 10 and 13 through 16 above. Defendant was in the business of leasing rooms to consumers which were equipped with pitchers to be used for steeping iced tea, including the pitcher at issue.

29.

At all times material, plaintiff was in privity with defendants as plaintiff rented the room from defendants.

111

111

111

30.

Defendants impliedly warranted to plaintiff that the condition of the pitcher was specifically fit for use as safe to steep iced tea, that the pitcher provided was of a quality that would pass without objection in the trade, was fit for ordinary purposes for which such products are used, and in all other respects was of merchantable quality as further defined by ORS 72.3140.

31.

Plaintiff reasonably relied on this implied warranty of merchantability in the pitcher provided with the room rental from defendants.

32.

Plaintiff further relied on defendants' skill and judgment in selection of the pitcher and on defendants' implied warranty of fitness for use of the pitcher as a safe product.

33.

At all times material, defendants knew of the particular purpose for which plaintiff was going to use the pitcher, as well as plaintiff's reliance on defendants' skill or judgment in selecting the pitcher.

34.

Defendants breached the implied warranty of merchantability set forth at ORS 72.3140 and the implied warranty of fitness set forth at ORS 72.3150 by providing plaintiff with the pitcher described in paragraph 10, above, in that the pitcher provided was not merchantable and was unfit for the ordinary purposes for which it was sold, was unsafe, would not pass without objection in the trade under the contract description, and did not conform to the promises or affirmations of fact made in its presentment to plaintiff.

111

35.

Plaintiff provided reasonable timely notice of the breach of the implied warranty of merchantability and implied warranty of fitness.

36.

As a direct result of the breaches described above, plaintiff has suffered the injuries and damages alleged in paragraphs 11 through 12 and 17 through 19, above, which are realleged and incorporated by reference herein.

(Count Four: Spoliation of Evidence)— Against All Defendants

37.

Plaintiff realleges paragraphs 1 through 36 as though set forth fully herein.

38.

On July 22, 2018, plaintiff provided notice of her burn injury caused by the shattered glass pitcher which had been provided by Brasada Ranch.

39.

Subsequent to receiving said notice, defendants took into their possession the shattered glass pitcher and acknowledged that they would be preserving said evidence.

40.

Plaintiff also notified defendants in writing of the need to preserve said evidence by way of its July 31, 2018, spoliation letter.

41.

As a result, defendants knew or should have known, that litigation was likely concerning plaintiff's injury and the glass pitcher provided by Brasada Ranch and therefore had a duty to preserve any and all evidence relating thereto.

42.

Nonetheless, defendants failed to preserve, destroyed, and/or disposed of said evidence.

43.

As a result of defendants' actions, plaintiff is not able to present physical evidence of the shattered glass pitcher or have her expert(s) examine the pitcher to establish liability.

44.

Accordingly, defendant should be sanctioned for the destruction of evidence and held strictly liable for the injuries caused to plaintiff by the shattered glass pitcher, leaving only amount of damages in dispute.

WHEREFORE, plaintiff requests judgment against defendant as follows:

- a) Plaintiff's economic damages in the amount of \$860,000.00;
- b) Plaintiff's noneconomic damages in the amount of \$500,000.00;
- c) Plaintiff's costs and disbursement incurred herein; and
- d) Such other relief that the Court deems just and equitable.

DATED: March 21, 2019.



By:

Emmanuel B. Miller, OSB#151319
Of Attorneys for plaintiff
Trial Attorney: Emmanuel B. Miller

